

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GEORGE BALSER
Plaintiff,

v.

HARBOR FREIGHT TOOLS TEXAS, LLP;
and HARBOR FREIGHT TOOLS USA, INC.
Defendants.

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CIVIL ACTION NO. 4:21-cv-502

**DEFENDANTS HARBOR FREIGHT TOOLS USA, INC. AND HARBOR FREIGHT
TOOLS TEXAS, LLP'S NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendants, **Harbor Freight Tools USA, Inc.** and **Harbor Freight Tools Texas, LLP** (hereinafter "Defendants") pursuant to 28 U.S.C. §1332, §1441 and §1446, jointly file this Notice of Removal to the United States District Court for the Southern District of Texas, Houston Division, and respectfully show the Court the following:

I. PROCEDURAL BACKGROUND

1. On January 12, 2021, Plaintiff George Balser filed his Original Petition styled *George Balser v. Harbor Freight Tools Texas, LLP and Harbor Freight Tools USA, Inc.* in the 189th Judicial District Court of Harris County, Texas, originally pending as Cause No. 2021-01709.¹ On January 19, 2021, Plaintiff filed his First Amended Petition adding additional background facts and allegations against the two named Defendants.²

2. The returns of service on file reflect that Defendant Harbor Freight Tools Texas, LLP was served with Plaintiff's Original Petition and Citation on January 14, 2021³ and with

¹ See Exh. 1 – Plaintiff's Original Petition.

² See Exh. 6 – Plaintiff's First Amended Original Petition.

³ See Exh. 4 – Service Return on Harbor Freight Tools Texas, LLP.

Plaintiff's First Amended Petition and Citation on January 22, 2021.⁴ The returns of service on file reflect that Defendant Harbor Freight Tools USA, Inc. was served with Plaintiff's Original Petition and Citation on January 14, 2021⁵ and with Plaintiff's First Amended Petition and Citation on January 25, 2021.⁶

3. Plaintiff claims that he suffered personal injuries while using a nail gun and safety glasses allegedly "manufactured and/or marketed by Defendants."⁷ Plaintiff has alleged that the nail gun was "defectively designed, manufactured, promoted, tested, assembled, planned, engineered, constructed, built, inspected, marketed, distributed, and/or sold,"⁸ and that the accident at issue occurred as a direct and proximate result of Defendants' negligence.⁹

4. This Notice of Removal is being filed within 30 days of service upon Defendants and is therefore timely under 28 U.S.C. §1446(b). *See Murphy Bros. v. Michetti Pipe Stringing Inc.*, 526 U.S. 344, 347-48 (1999) (notice of removal is timely under 28 U.S.C §1446(b) if filed within 30 days after service of the complaint).

5. This United States District Court for the Southern District of Texas, Houston Division, is the district and division embracing the place where such action is pending. *See* 28 U.S.C. §103(4). All Defendants consent to this removal to the United States District Court for the Southern District of Texas, Houston Division. 28 U.S.C. §1446(b)(2)(A).

6. Defendants, concurrently with the filing of this petition, have given written notice of the filing of this Notice of Removal to all parties of record and to the Clerk of the District Court in Harris County, Texas.¹⁰

⁴ *See* Exh. 9 – Service Return on Harbor Freight Tools Texas, LLP.

⁵ *See* Exh. 5 – Service Return on Harbor Freight Tools USA, Inc.

⁶ *See* Exh. 10 – Service Return on Harbor Freight Tools USA, Inc.

⁷ *See* Exh. 6 – Plaintiff's First Amended Original Petition at ¶8.

⁸ *Id.* at ¶12.

⁹ *Id.* at §IV.

¹⁰ *See* Exh. 13 – Defendants' Notice of Removal to Federal Court.

7. Pursuant to 28 U.S.C. §1446(a), copies of all process, pleadings, orders and other filings in the state court suit are attached to this Notice of Removal and are incorporated herein by reference.¹¹

8. Defendants expressly reserve the right to raise all defenses and objections to Plaintiff's claims or to otherwise plead after the action is removed to this Honorable Court.

II. REMOVAL BASED ON DIVERSITY JURISDICTION

9. This Court has jurisdiction based on 28 U.S.C. §1332(a)(1) in that "the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between ... citizens of different States."

(a) Amount in Controversy

10. Plaintiff seeks recovery of damages in the form of monetary relief "over \$1,000,000.00."¹² As such, the amount in controversy is greater than \$75,000.00. *See* 28 U.S.C. §1446(c)(2).

(b) Diversity of Citizenship

11. This Court has subject matter jurisdiction over this action because Plaintiff's citizenship is diverse from the citizenship of all Defendants, thereby satisfying the requirements of 28 U.S.C. §1332.

12. Plaintiff, George Balser, has plead that he "is an individual residing in Harris County, Texas."¹³ Thus, he is a citizen of the state of Texas.

13. Plaintiff has plead incorrect jurisdictional facts relating to Defendant Harbor Freight Tools USA, Inc.'s ("HFT USA, Inc.") citizenship. Specifically, Plaintiff has incorrectly

¹¹ *See* Exh. 1 – 13.

¹² *See* Exh. 6 – Plaintiff's First Amended Petition at ¶41.

¹³ *Id.* at ¶2.

alleged that HFT USA, Inc. has “its principal place of business in this state in Harris County, Texas.”¹⁴

14. “A corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State of foreign state where it has its principal place of business.” 28 U.S.C. §1332(c)(1). HFT USA, Inc. is a foreign company incorporated under the laws of the State of Delaware.¹⁵ At the time of the incident that gives rise to this claim and continuing to the current date, HFT USA, Inc.’s principal place of business is in Calabasas, California.¹⁶ Thus, HFT USA, Inc. is a citizen of the state of Delaware and California.

15. Plaintiff has plead incorrect jurisdictional facts relating to the citizenship of Defendant Harbor Freight Tools Texas, LLP (“HFT Texas, LLP.”). Specifically, Plaintiff has incorrectly alleged that HFT Texas, LLP “is a limited liability partnership with its principal place of business in this state in Harris County, Texas.”¹⁷

16. Harbor Freight Tools Texas, LLP was not an existing legal entity at the time of the incident that gives rise to this lawsuit, and is currently not an existing legal entity.¹⁸

17. To the extent that Harbor Freight Tools Texas, LLP is a misnomer and Plaintiff intended to name Harbor Freight Tools Texas, LP (“HFT Texas, LP”) as a defendant, HFT Texas, LP it also is a foreign entity that is not a citizen of Texas.¹⁹

18. “The citizenship of a limited partnership is based upon the citizenship of each of its partners.” *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008); *see also Deep Marine Technology, Inc. v. Conmaco/Rector, L.P.*, 515 F. Supp. 2d 760, 766 (S.D. Tex.

¹⁴ *Id.* at ¶4.

¹⁵ Exh. 14 – Affidavit of Marc Friedman; Exh. 15 – Harbor Freight Tools USA, Inc.’s corporate filings.

¹⁶ *Id.*

¹⁷ *See* Plaintiff’s First Amended Original Petition at ¶3.

¹⁸ Exh. 14 – Affidavit of Marc Friedman.

¹⁹ *Id.*

2007)(“The citizenship of an unincorporated association such as a limited partnership depends on the citizenship of all its partners.”). HFT Texas, LP was formed under the laws of the State of Delaware.²⁰ At the time of the incident that gives rise to this claim, and continuing to the current date, HFT Texas, LP’s principal office has been and remains located in Calabasas, California.²¹

19. At the time of the incident that gives rise to this claim and continuing to the current date, HFT Texas, LP’s general partner is Texas Management Services, LLC.²² At the time of the incident that gives rise to this claim and continuing to the current date, HFT Texas, LP’s limited partner is Harbor Freight Tools USA, Inc.²³ As addressed above, Harbor Freight Tools USA, Inc. is a citizen of Delaware and California.

20. “The citizenship of an LLC is determined by the citizenship of all of its members.” *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). At the time of the incident that gives rise to this claim and continuing to the current date, Texas Management Services, LLC’s sole member is Harbor Freight Tools USA, Inc.²⁴ As addressed above, Harbor Freight Tools USA, Inc. is a citizen of Delaware and California. Thus, Texas Management Services, LLC is a citizen of Delaware and California.

21. Because the citizenship of HFT Texas, LP’s partners is Delaware and California, HFT Texas, LP is a diverse citizen of the state of Delaware and California.²⁵

22. Both at the time of the incident and at the current time, HFT Texas, LP operates distribution centers only in California and South Carolina.²⁶ Its employees are employed in

²⁰ Exh. 16 – Harbor Freight Tools Texas, LP’s filings.

²¹ *Id.*

²² *See* Exh. 16 – Harbor Freight Tools Texas, LP’s filings.

²³ *Id.*

²⁴ *See* Exh. 17 – Texas Management Services, LLC’s filings.

²⁵ *See* Exh. 15 – 17.

²⁶ Exh. 14 – Affidavit of Marc Friedman.

California and South Carolina.²⁷ It does not employ any individuals that do not work for these distribution centers in California and South Carolina.²⁸ HFT Texas, LP does not maintain any offices in the state of Texas.²⁹

23. Because Plaintiff is a citizen of Texas and all named Defendants were at the time of the incident that gives rise to this lawsuit and are currently citizens of Delaware and California, there is complete diversity among the parties. Since complete diversity of citizenship exists and an amount in controversy in excess of \$75,000, exclusive of interests and costs, this Court has original jurisdiction over this action. *See* 28 U.S.C. § 1332(a). As a result, this action is removable pursuant to 28 U.S.C. §1441(a).

III. JURY DEMAND

24. Defendants Harbor Freight Tools USA, Inc. and Harbor Freight Tools Texas, LLP demand a jury on all triable issues pursuant to Federal Rules of Civil Procedure 38 and 81(c).

WHEREFORE, Defendants, Harbor Freight Tools USA, Inc. and Harbor Freight Tools Texas, LLP, pray that this Court accept this Notice of Removal for filing in accordance with the provisions of 28 U.S.C. §1441, *et. seq.*, and grant all other relief to which they are justly entitled.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

Respectfully submitted,

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Harbor Freight Tools Texas, LLP

CERTIFICATE OF SERVICE

In compliance with the Federal Rules of Civil Procedure, I, Harold L. Buddy Socks, certify that on this **12th** day of **February, 2021**, a true and correct copy of the foregoing document filed electronically with the clerk of the Court in accordance with the Federal Rules of Civil Procedure, is served on the party or attorney electronically pursuant to the Federal Rules of Civil Procedure, or if the email address of the party or attorney is not on file with the electronic filing manager then service is accomplished pursuant to the Federal Rules of Civil Procedure.

The following parties or attorney(s) are served with the foregoing document:

VIA E-FILE &/OR EMAIL

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THOMAS N. THURLOW & ASSOCIATES, P.C.
Woodway Tower
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Houston, Texas 77056
Attorney for Plaintiff

/s/ H. L. Buddy Socks

H. L. Buddy Socks

EXHIBIT INDEX

Exhibit 1 – Plaintiff’s Original Petition

Exhibit 2 – Request for Issuance of Service to Harbor Freight Tools Texas, LLP

Exhibit 3 – Request for Issuance of Service to Harbor Freight Tools USA, Inc.

Exhibit 4 – Service Return on Harbor Freight Tools Texas, LLP

Exhibit 5 – Service Return on Harbor Freight Tools USA, Inc.

Exhibit 6 – Plaintiff’s First Amended Original Petition

Exhibit 7 – Request for Issuance of Service to Harbor Freight Tools Texas, LLP

Exhibit 8 – Request for Issuance of Service to Harbor Freight Tools USA, Inc.

Exhibit 9 – Service Return on Harbor Freight Tools Texas, LLP

Exhibit 10 – Service Return on Harbor Freight Tools USA, Inc.

Exhibit 11 – Defendant Harbor Freight Tools Texas, LLP’s Original Answer.

Exhibit 12 – Defendant Harbor Freight Tools USA, Inc.’s Original Answer.

Exhibit 13 – Defendants’ Notice of Removal to Federal Court

Exhibit 14 - Affidavit of Marc Friedman.

Exhibit 15 – Harbor Freight Tools USA, Inc.’s filings

Exhibit 16 – Harbor Freight Tools Texas, LP’s filings

Exhibit 17 – Texas Management Services, LLC’s filings